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No. 03-897

In the Supreme Court of the United States

NORTH CAROLINA PAYPHONE ASSOCIATION,
PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether 47 U.S.C. 276 authorizes the Federal Communications Commission to regulate the rate charged for a pay telephone line provided by a local exchange carrier that is not a Bell operating company, as defined in 47 U.S.C. 153(4).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-19a) is reported at 334 F.3d 69. The order of the Federal Communications Commission (Pet. App. 20a-60a) is reported at 17 F.C.C.R. 201.

JURISDICTION

The judgment of the court of appeals was entered on July 11, 2003. A petition for rehearing was denied on September 22, 2003 (Pet. App. 61a-62a). The petition for a writ of certiorari was filed on December 22, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. For many years, pay telephone service was provided exclusively by local exchange carriers (LECs). See *Implementation of the Pay Telephone Reclassification and Compensation Provision of the Telecommunications Act of 1996, Notice of Proposed Rulemaking*, 11 F.C.C.R. 6716, 6719-6720 (1996). The LECs held a payphone monopoly because the technology of the time required that pay telephones be controlled at the central switching office, which effectively precluded any competitive service. See *Registration of Coin Operated Telephones*, 57 Rad. Reg. 2d (P&F) 133, 134-135 (1984). One regulatory implication of that arrangement was that the cost of payphone equipment was included in the LECs' regulated rate bases. The costs of providing payphone service, which was regulated primarily by the States, were largely recovered through general local rates for services that were unrelated to payphones. 11 F.C.C.R. at 6718. As a result, LEC payphone operations were subsidized by revenues generated by other regulated services.

Technology developed in the 1980s enabled the manufacture of payphones that could replicate at the phone itself functions that previously could be performed only by the LEC's switch. That development allowed competitors to enter the payphone market. 11 F.C.C.R. at 6720. But while LEC-owned payphone operations were assured of recovering their costs by virtue of the subsidies built into the regulatory system, payphone service providers (PSPs) that were independent of the LECs had no such assurance. See H.R. Rep. No. 204, 104th Cong., 1st Sess. Pt. 1, at 88 (1995). Coin rates, which were set by the States, did not always fairly compensate the payphone owner. 11 F.C.C.R. at 6728 n.64.

b. In the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, Congress revamped the regulation of local telephone service, including payphone service. In 47 U.S.C. 276, Congress eliminated the two-tiered hierarchy under which LEC-owned payphones were subsidized but independently owned payphones were not. Congress directed the Federal Communications Commission (FCC or Commission) to promulgate regulations that would "promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public." 47 U.S.C. 276(b)(1). Specifically, the statute directed that the FCC's regulations "discontinue * * * all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a compensation plan" under which "all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone." 47 U.S.C. 276(b)(1)(A) and (B). Congress specified that "[t]o the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements." 47 U.S.C. 276(c).

Although the 1996 Act gave the FCC new authority over the payphone industry generally, several of its provisions expressly apply only to Bell operating companies (BOCs), as defined in 47 U.S.C. 153(4). BOCs are the local exchange companies that were divested from AT&T when that company was broken up. Section 276, which is contained in a part of the Act entitled "Special Provisions Concerning Bell Operating Companies," Pub. L. No. 104-104, § 110 Stat. 86, addresses the provision of payphone service by BOCs. It provides that no BOC "shall * * * subsidize its payphone

service directly or indirectly from" its regulated local exchange operations, 47 U.S.C. 276(a)(1), and that no BOC "shall * * * prefer or discriminate in favor of its payphone service," 47 U.S.C. 276(a)(2). The non-subsidy provision is largely replicated in Section 276(b)(1)(B), which applies to all LECs, but there is no comparable non-discrimination provision that applies to the non-BOC LECs.

In another provision of Section 276 that applies only to BOCs, Congress directed the FCC to implement Section 276(a)(1) and (2) by "prescrib[ing] a set of non-structural safeguards for Bell operating company payphone service * * * which * * * shall, at a minimum, include the nonstructural safeguards equal to those [the FCC] adopted" in a proceeding called the "Computer Inquiry-III" docket. 47 U.S.C. 276(b)(1)(C). In that proceeding, the Commission had adopted measures to protect competitors against cross-subsidization and discrimination by BOCs where BOCs were the monopoly providers of inputs on which the competitors' businesses depended.

To prevent discrimination, the Commission in the *Computer III* proceeding had required the BOCs to structure their physical network facilities so that individual services, features and functions of the network could be unbundled and provided individually to competing providers of enhanced services. See *California* v. *FCC*, 39 F.3d 919, 927 (9th Cir. 1994). The Commission had then required that each individual element of the network be priced according to what it called the "new services test," under which the price for a service may not exceed the direct forward-looking cost of providing it plus a reasonable allocation of overhead. *In the Matter of Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access*

Charge Subelements for Open Network Architecture Policy and Rules Concerning Rates for Dominant Carriers, 6 F.C.C.R. 4524, 4531-4532 (1991).

c. The Commission implemented the various requirements of Section 276 by rulemaking. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 F.C.C.R. 20,541, on reconsideration, 11 F.C.C.R. 21,233, 21,308 (1996). As directed by the statute, it discontinued the specified subsidies. *Id.* at 20,628-20,634. It also deregulated the price a payphone user would pay for making a local call paid for by depositing coins into the payphone, and preempted states from regulating the coin rate. *Id.* at 20,572-20,573. Payphone service providers, or PSPs, were thus free to set the rate at whatever level they believed the market would bear. To assure compensation for calls not paid for by deposited coins, the Commission adopted a per-call payment system under which each PSP would be paid a set amount for each completed call. *Id.* at 20,596-20,599. The Commission also required all LECs to provide PSPs with payphone line service—the phone line that connects a payphone to the telephone network—at forward-looking, cost-based rates priced under the new services test. *Id.* at 20,614, 21,308.

2. a. In July 1997, a group of PSPs asked the Wisconsin Public Service Commission to determine whether the line rates charged by four telephone companies in that state complied with the federal new services test. Pet. App. 31a. The state commission concluded that it was without jurisdiction to make the requested determination, and the PSPs then filed a complaint with the FCC. *Id.* at 31a-32a. The Commission's Common Carrier Bureau ordered the LECs

at issue to file tariffs for payphone lines with the FCC and announced that it would review those tariffs under a forward-looking, cost-based methodology. *In the Matter of Wisconsin Public Service Commission: Order Directing Filings*, 15 F.C.C.R. 9978 (CCB 2000).

The LECs sought review of the Bureau's order by the full Commission, arguing, *inter alia*, that the Commission lacked jurisdiction to review the rates for payphone line service, which has traditionally been considered an aspect of intrastate service beyond the FCC's jurisdiction. They contended that Section 152(b) of the Communications Act of 1934, 47 U.S.C. 152(b), limits FCC jurisdiction over intrastate rates, and that nothing in Section 276 authorized the Commission to set intrastate payphone line rates. Section 152(b) provides, in relevant part, that "nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to * * * charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier." This Court has held that the provision "fences off from FCC reach or regulation intrastate matters" except where another statutory provision is "so unambiguous or straightforward as to override the command of § 152(b)." *Louisiana Pub. Serv. Comm'n* v. *FCC*, 476 U.S. 355, 370, 377 (1986).

b. The Commission found that Section 276 authorized it to regulate the price of payphone line service provided by BOCs, but did not grant it similar authority with respect to non-BOC LECs. Pet App. 37a-46a. As to BOC line rates, the Commission explained, Section 276(a) forbids any BOC from subsidizing its payphone service or discriminating in favor of its own service. That directive makes sense only if discrimination and subsidization are eliminated at both the intrastate

and the interstate levels. By authorizing the Commission to eliminate *all* BOC subsidies and *all* BOC discrimination, Congress necessarily gave the Commission the power to regulate intrastate matters related to those issues. Moreover, the overall thrust of the statute, including the preemption provision, was to impose federal authority over certain aspects of the payphone market. Thus, the Commission concluded, Section 276(a) by its terms applies to both the interstate and intrastate activities of BOCs. Pet. App. 38a-40a.

Furthermore, Section 276(b)(1)(C) directs the FCC to promulgate regulations to effectuate Section 276(a). Specifically, Congress required the Commission to implement a set of safeguards for BOCs "which * * * shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623) proceeding." 47 U.S.C. 276(b)(1)(C). Those safeguards included the "new services test," which protects against discrimination by requiring forward-looking cost-based rates for certain services. In the Computer III proceeding, the Commission also had "reviewed * * * the fundamental intrastate tariff structures" for similar services. Pet. App. 43a. Thus, by forbidding the BOCs from discriminating in favor of their payphone operations at any level and by directing the Commission to enforce that restriction by imposing "at a minimum" the safeguards of the Computer III regime, Congress necessarily granted the Commission authority to require that the intrastate payphone line rates of BOCs be based on the new services test. Congress further made clear that the FCC's regulations under the new regime preempted any contrary state regulation. *Id.* at 42a-43a.

With respect to non-BOC LECs, the Commission found that Congress had not granted authority over

intrastate line rates "with the requisite clarity" to overcome Section 152(b), because "sections 276(a) and (b)(1)(C) apply only to BOCs" and not to non-BOC LECs. Pet. App. 45a. The Commission explained that "[s]ince there are statutory provisions that empower us to apply the new services test to payphone line rates and grant us that authority only over BOCs, we do not have a Congressional grant of jurisdiction over non-BOC LEC line rates." *Ibid.* Thus, the Commission concluded that, although cost-based rates under the new services test are necessary to guard against discrimination, see *id.* at 43a, Congress in Section 276 did not explicitly forbid non-BOC LECs from discriminating.

3. The court of appeals affirmed the Commission's order. Pet. App. 1a-19a. After concluding that petitioner had standing, *id.* at 8a-10a, it determined that Section 276 "unambiguously and straightforwardly authorizes the Commission to regulate the BOCs' intrastate payphone line rates," overcoming the hurdle imposed by Section 152(b). *Id.* at 12a. The court explained that Section 276(a) did not have to include the word "intrastate" in order to be interpreted to apply to the BOCs' intrastate payphone line rates. "If Congress had meant to prohibit only interstate subsidies and discrimination, it is difficult to understand why it would have directed the Commission to regulate *intrastate* call compensation and *intrastate* payphone subsidies" elsewhere in the statute. *Id.* at 14a. Moreover, "[t]he statute's structure and purpose also support the Commission's assertion of jurisdiction." *Ibid.* Section 276, the court noted, was intended "to replace a state-regulated monopoly system with a federally facilitated, competitive market," *ibid.*, and restricting the Commission's jurisdiction to interstate matters "would utterly nullify the 1996 amendments" to the Communications

Act, *ibid.* (quoting *AT&T Corp.* v. *Iowa Utilities Bd.*, 525 U.S. 366, 380 (1999)).

As to non-BOC LEC line rates, the court of appeals explained that "sections 276(a) and 276(b)(1)(C), the sources of the Commission's authority to regulate intrastate payphone rates, expressly apply only to the BOCs. We must presume that when Congress referred to 'Bell operating companies' rather than 'local exchange carriers,' it acted deliberately." Pet. App. 16a. The court rejected the contention that the policies behind Section 276 of promoting competition in the payphone industry generally were sufficient to justify "look[ing] beyond clear statutory text to discern the statute's meaning." *Ibid.* (quoting *National Pub. Radio, Inc.* v. *FCC*, 254 F.3d 226, 230 (D.C. Cir. 2001)). Finally, the court found that other provisions of the Communications Act, such as Sections 201(b), 202(a), and 205(a), "cannot trump section 152(b)'s specific command that no Commission regulations shall preempt state regulations unless Congress expressly so indicates." *Id.* at 17a.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any court of appeals. Further review is not warranted.

1. Section 152(b) of the Communications Act "fences off from FCC reach or regulation intrastate matters." *Louisiana Pub. Serv. Comm'n* v. *FCC*, 476 U.S. 355, 370 (1986). The Commission may regulate such matters —which include the payphone line rates at issue here— only where the meaning of a statutory provision that authorizes their regulation is "so unambiguous or straightforward as to override the command of § 152(b)." *Id.* at 377. The court of appeals correctly

found that Section 276 did not satisfy that standard with respect to non-BOC LEC intrastate line rates.

Section 276 does not give the Commission general authority to regulate the rates charged by LECs for payphone lines, which are considered an intrastate service. Rather, the authority Congress gave the Commission over line rates extends only to BOCs and not to non-BOC LECs. In particular, Congress crafted "nondiscrimination safeguards" that apply only to the BOCs. 47 U.S.C. 276(a). Moreover, it gave the Commission authority to "prescribe a set of nonstructural safeguards for Bell operating company payphone service," which included the Computer III cost-based pricing regime. 47 U.S.C. 276(b)(1)(C). The court of appeals thus correctly concluded that "sections 276(a) and 276(b)(1)(C), the sources of the Commission's authority to regulate intrastate payphone rates, expressly apply only to the BOCs," and that "when Congress referred to 'Bell operating companies' rather than 'local exchange carriers,' it acted deliberately." Pet. App. 16a. In the absence of any statutory authority to regulate non-BOC LEC line rates—let alone authority that is unambiguous or straightforward—Section 152(b) prohibits the Commission from doing so.

a. Petitioner contends that the court's judgment conflicts with this Court's decision in *AT&T Corp.* v. *Iowa Utilities Board*, 525 U.S. 366 (1999). The precise nature of the alleged conflict is unclear, but the claim appears to be that in *Iowa Utilities* the Court held that as long as the statute contains any "unequivocal grant of authority to reach *intrastate rates*," the "hurdle" imposed by Section 152(b) "has been scaled," and the Commission may then regulate all such intrastate matters under its "general rulemaking authority." Pet. 12. Because the statute reaches the BOCs' intrastate

rates, the argument goes, the court of appeals erred by "conflat[ing] *who* can be regulated with *what* can be regulated." Pet. 16. That argument is mistaken.

Iowa Utilities had to do with the Commission's implementation of 47 U.S.C. 251 and 252, which set forth various "obligations of all local exchange carriers" and various "additional obligations of incumbent local exchange carriers"—*i.e.*, both BOCs and non-BOC LECs. 47 U.S.C. 251(b) and (c). The Court held that those provisions "clearly 'apply' to intrastate service" within the meaning of Section 152(b), and that, having given the statutes an explicit application to intrastate matters, Congress did not have to give the FCC a second specific grant of jurisdiction to promulgate regulations implementing those provisions. *Iowa Utilities*, 525 U.S. at 380. The case does not hold, as petitioner would have it, that a statutory grant of authority to reach the intrastate rates charged by some carriers necessarily implies authority to reach the rates charged by all carriers. No such question was presented in *Iowa Utilities* because the statutory provisions at issue there explicitly applied to all local exchange carriers, whereas Section 276 applies by its plain terms only to the line rates of BOCs. Accordingly, the decision below does not conflict with *Iowa Utilities*.

Nor did the court of appeals improperly "conflate[] who can be regulated with what can be regulated." Pet. 16. Section 276 expressly links the intrastate reach of the Commission's authority with the entities subject to the statutory anti-discrimination restriction, the BOCs.[1]

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[1] *Iowa Utilities* thus does not support petitioner's claim that "[b]y specifically referring to BOCs, Congress was telling the FCC that it was *required* to take certain actions with respect to this species of carriers," but that the statute permits the Commission

Congress's silence about non-BOC LEC line rates is governed by this Court's holding in *Iowa Utilities* that "[i]nsofar as Congress has remained silent [about extending the Communications Act into intrastate matters] * * * § 152(b) continues to function." 525 U.S. at 382 n.8. The decision below therefore is entirely consistent with *Iowa Utilities*.

b. Petitioner is also mistaken in its contention (Pet. 15-16) that the Commission's general authority under 47 U.S.C. 201(b), 202(a), and 205(a) provides the Commission with jurisdiction over non-BOC LEC intrastate line rates.[2] Pet. 15-16. Those provisions do not provide substantive authority to regulate intrastate rates; if they did, Section 152(b) would be effectively meaningless. Section 201(b), for example, authorizes the Commission to issue rules implementing the mandate that it regulate the BOCs' payphone line rates. Petitioner has not identified any language in that Section, or elsewhere, that authorizes the Commission to implement rules relating to rates charged by non-BOC LECs. Non-BOC LEC price discrimination may indirectly affect matters within the Commission's juris-

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to regulate non-BOC LECs as well. Pet. 17 (citing *Iowa Utilities*, 525 U.S. at 385). The statutes at issue in *Iowa Utilities* applied to the intrastate activities of all LECs, whereas the statutory provision at issue here applies only to BOCs.

[2] Section 201(b) grants the FCC authority to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Chapter." Section 202(a) makes it "unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services." Section 205(a) authorizes the Commission "to determine and prescribe what will be the just and reasonable charge or the maximum or minimum * * * charge or charges" upon a finding of a violation of Section 202(a).

diction, but regulation of intrastate matters to protect against such indirect effects is precisely what Section 152(b) was intended to foreclose. See *Louisiana Pub. Serv. Comm'n*, 476 U.S. at 371.

Contrary to petitioner's argument (Pet. 15), nothing in *Iowa Utilities* is inconsistent with that conclusion. The Court in *Iowa Utilties* determined that Section 201(b) "gives the agency jurisdiction to make rules governing matters to which" Sections 251 and 252 apply. 525 U.S. at 380. That holding has no bearing here because Section 276, unlike Sections 251 and 252, does not apply to the intrastate payphone line rates of non-BOC LECs. The court of appeals was correct in holding that "[s]uch general provisions cannot * * * trump section 152(b)'s specific command that no Commission regulations shall preempt state regulations unless Congress expressly so indicates." Pet. App. 17a.

c. Petitioner also errs in its contention (Pet. 14) that the decision below conflicts with the D.C. Circuit's holding in *Illinois Public Telecommunications Ass'n* v. *FCC*, 117 F.3d 555 (D.C. Cir.), clarified on reh'g, 123 F.3d 693 (1997), cert. denied 523 U.S. 1046 (1998), that Section 276 gave the FCC jurisdiction to regulate intrastate coin rates for payphones. The provision of Section 276 at issue in *Illinois Public Telecommunications* directed the Commission to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed *intrastate and interstate* call [made] using their payphone." 47 U.S.C. 276(b)(1)(A) (emphasis added). That provision plainly applies to intrastate calls, and the court correctly held that the Commission could regulate intrastate coin rates notwithstanding Section 152(b). The statutory provision at issue here, by contrast, is equally plain in its application only to

BOCs and not to non-BOC LECs. In any event, even if petitioner had shown an intra-circuit conflict, it would not provide a reason for this Court to review the matter. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

2. Petitioner also contends that, notwithstanding the language of the statute, the decision below "frustrate[s]" Congress's intent in "enact[ing] a comprehensive scheme for payphone regulation." Pet. 19. In effect, petitioner argues that the regulatory intent behind the statute should trump the language chosen by Congress. Petitioner is mistaken.

As described above, Section 276 grants the FCC authority only over the line rates of BOCs, and not over the rates of non-BOC LECs. In such circumstances, "the plain meaning of legislation should be conclusive, except in the 'rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters.'" *United States* v. *Ron Pair Enters., Inc.*, 489 U.S. 235, 242 (1989) (quoting *Griffin* v. *Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982)). As the court of appeals correctly held (Pet. App. 16a-17a), the present dispute is not such a case.

Congress singled out BOCs for separate treatment in many respects in the Telecommunications Act of 1996. Section 276 appears in Part III of Title II of the Communications Act, which is entitled "Special Provisions Concerning Bell Operating Companies." Pub. L. No. 104-104, § 151(a), 110 Stat. 86. Part III contains five statutory sections in addition to Section 276 that also regulate the activities of BOCs—but not other LECs—in various ways. Section 271 regulates BOC entry into long distance service; Section 272 requires BOCs to engage in certain lines of business only

through separate corporate affiliates; Section 273 regulates manufacturing by BOCs; Section 274 regulates electronic publishing by BOCs; and Section 275 regulates BOC participation in the business of alarm monitoring services.

That context demonstrates the error in petitioner's claim that because Congress intended to implement a "comprehensive" statute, excluding non-BOC LECs from the non-discrimination requirement would "leav[e] the explicit purposes of the statute grossly unfulfilled." Pet. 20. Congress plainly concluded that BOCs needed a greater degree of regulation and restriction than other local exchange companies. Congress could rationally have determined that BOCs have anti-competitive incentives greater than those of other companies; that their scope of operations give them opportunities to undermine the public interest that exceeded those of the smaller non-BOC LECs; that non-BOC LECs, many of which operate in rural areas, should not have to face the same types of restrictions on their operations; or that the chosen statutory language reflected an appropriate compromise among those, or other, positions. In any event, an unexpressed legislative intention is not an appropriate basis on which to disregard clear statutory language. See *Board of Governors of Fed. Reserve Sys.* v. *Dimension Fin. Corp.*, 474 U.S. 361, 373-374 (1986) ("Application of 'broad purposes' of legislation at the expense of specific provisions ignores the complexity of the problems Congress is called upon to address and the dynamics of legislative action.").

That conclusion is particularly appropriate in light of Section 152(b)'s express limitation of the FCC's jurisdiction over intrastate matters. This Court made clear in *Louisiana Public Service Comm'n* that a statutory grant of authority over intrastate matters must be

"unambiguous or straightforward" in order to override that statute's jurisdictional command. 476 U.S. at 377. Indeed, Section 152(b) not only limits the FCC's jurisdiction, but also acts as a "rule of statutory construction" for making the determination whether the intrastate prohibition has been overcome. *Id.* at 373. It "presents its own specific instructions" regarding the correct interpretation of statutes that do not expressly authorize the regulation of intrastate matters, but might otherwise be construed to create such authorizations as a policy matter. *Id.* at 377 n.5. Here, as the court of appeals concluded, that rule compels that Section 276 not be read to implicitly reach intrastate line rates of non-BOC LECs.

3. This case does not warrant further review for the additional reason that it presents no substantial issue of national importance. Recent statistics compiled by the FCC indicate that in 2003, out of about 1.5 million total payphones in the country, only about 100,000—less than seven percent—were owned by independent PSPs that operated in non-BOC territories. FCC, *Trends in Telephone Service* 7-9 Table 7.6 (Aug. 2003) <http://fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend803.pdf>. In its order, the FCC encouraged states to apply the cost-based new services test to non-BOC LECs for policy reasons. Pet. App. 46a. Furthermore, to the degree that, as petitioner reports (Pet. 21), LECs are leaving the payphone business, those LECs no longer have an incentive to discriminate or otherwise unfairly compete against independent PSPs, which is what the cost-based line rate requirement is intended to protect against in the first place. Finally, due to the Commission's deregulation of the local coin rate and the statutory requirement that all payphone owners be fairly compensated

for "each and every" completed call made from their payphones, 47 U.S.C. 276(b)(1)(A), PSPs are assured of recouping their costs. To be sure, the number of payphones deployed throughout the country has dropped, but that is due in far greater likelihood to the increasing prevalence of ubiquitous cellular phone service than to above-cost line rates in a relatively minor segment of the payphone market. There is no issue of national importance warranting this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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